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SENATE BILL 647

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO LOCAL GOVERNMENT; ENACTING THE RENEWABLE ENERGY FINANCING DISTRICT ACT; AUTHORIZING MUNICIPALITIES AND COUNTIES TO CREATE RENEWABLE ENERGY FINANCING DISTRICTS; AUTHORIZING THE IMPOSITION OF SPECIAL ASSESSMENTS ON REAL PROPERTY; AUTHORIZING ISSUANCE OF SPECIAL ASSESSMENT BONDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Renewable Energy Financing District Act".

Section 2. LEGISLATIVE FINDINGS.--The legislature finds that:

A. the development of renewable energy sources will advance the security, economic well-being and public and environmental health of the state, as well as contributing to the energy independence of the nation and addressing the issue

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1 of global climate change;

2 B. it is in the best interests of the state,
3 municipalities and counties to encourage the development of
4 distributed generation renewable energy sources and the
5 installation by property owners of such energy sources;

6 C. the high front-end costs of renewable energy
7 installations to real property prevents many property owners
8 from making these improvements, and therefore it is desirable
9 and necessary to authorize alternative financing procedures to
10 promote the installation of the improvements; and

11 D. the creation and administration of renewable
12 energy financing districts to facilitate the development of
13 renewable energy improvements on property in the district will
14 serve a valid public purpose and is expressly declared to be in
15 the public interest.

16 Section 3. DEFINITIONS.--As used in the Renewable Energy
17 Financing District Act:

18 A. "county" means any county, including an H class
19 county;

20 B. "debt service" means the principal of, interest
21 on and premium, if any, on the bonds, when due, whether at
22 maturity or prior redemption and fees and costs of agents
23 necessary to handle the bonds and the costs of credit
24 enhancement or liquidity support;

25 C. "district" means a renewable energy financing

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1 district formed pursuant to the Renewable Energy Financing
2 District Act by a municipality or by a county in an
3 unincorporated area or in an incorporated area with the
4 municipality's consent;

5 D. "district board" means the board of directors of
6 the district, which shall be composed of the members of the
7 governing body of the municipality or county in which the
8 district is located, or at the option of the governing body,
9 five directors appointed by the governing body, as provided in
10 Section 9 of the Renewable Energy Financing District Act. The
11 board shall serve until replaced by elected directors, which
12 shall occur not later than six years after the date on which the
13 resolution establishing the district is enacted;

14 E. "election" means an election held in compliance
15 with the provisions of the Renewable Energy Financing District
16 Act;

17 F. "governing body" means the body or board that by
18 law is constituted as the governing body of the municipality or
19 county in which the district is located;

20 G. "municipality" means an incorporated city,
21 village or town;

22 H. "owner" means the person who is listed as the
23 owner of real property in the district on the current property
24 tax assessment roll;

25 I. "renewable energy improvement" means a

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1 photovoltaic, solar thermal, geothermal or wind energy system
2 permanently installed on real property; and

3 J. "special assessment" means a levy imposed against
4 real property within a district.

5 Section 4. RENEWABLE ENERGY FINANCING DISTRICTS
6 AUTHORIZED.--

7 A. A governing body of a municipality or county may
8 form a district for the purpose of encouraging, accommodating
9 and financing renewable energy improvements on property within
10 the municipality or county. A district shall include only
11 property for which an owner executes an agreement consenting to
12 the inclusion of the property within the district and to the
13 imposition of a special assessment on the property for the
14 purpose of financing renewable energy improvements.

15 B. A district formed by a municipality shall be
16 wholly within the boundaries of the municipality. A district
17 formed by a county shall be wholly within the boundaries of the
18 county and shall be in the unincorporated area of the county, or
19 may include an incorporated area with the municipality's
20 consent. A district may include contiguous and noncontiguous
21 property.

22 C. Except as otherwise provided in this section, a
23 district shall be a political subdivision of the state, separate
24 and apart from the municipality or county.

25 Section 5. RESOLUTION DECLARING INTENTION TO FORM

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1 DISTRICT.--

2 A. A governing body may adopt a resolution declaring
3 its intention to form a district. The resolution shall state
4 the following:

5 (1) the purposes for which the district is to
6 be formed;

7 (2) that the district shall include only
8 property for which the owner has agreed to the inclusion of the
9 property within the district, and that inclusion of property may
10 occur subsequent to the adoption of the resolution forming the
11 district;

12 (3) the process by which a property owner can
13 execute an agreement to include property in the district;

14 (4) a description of the specific types of
15 renewable energy improvements that will be eligible for the
16 financing provided pursuant to the Renewable Energy Financing
17 District Act;

18 (5) that inclusion of property in the district
19 will result in the imposition of special assessments on the
20 property to pay the costs of the approved renewable energy
21 improvements, financing and administrative fees;

22 (6) the method of calculating the amount of
23 the special assessment and the manner of collection of the
24 special assessment;

25 (7) that standards and requirements will be

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1 set by the district board for renewable energy improvements to
2 be installed on property in the district;

3 (8) a reference to the Renewable Energy
4 Financing District Act; and

5 (9) that the district will be governed by a
6 district board composed of the members of the governing body or
7 by five directors to be appointed by the governing body.

8 B. The resolution shall direct that a hearing on
9 formation of the district be scheduled and notice be published
10 as required for public hearings of the governing body.

11 Section 6. HEARING--FORMATION OF A DISTRICT.--

12 A. At the hearing on formation of a district, the
13 governing body shall accept and pass on written and oral
14 testimony and evidence presented in support of or in opposition
15 to the formation of the district. After hearing the written and
16 oral testimony, the governing body shall determine whether the
17 district should be formed based on the interests, convenience or
18 necessity of the owners of property in the proposed district and
19 the citizens of the municipality or county in which the proposed
20 district would be located.

21 B. If the governing body determines that the
22 district should be formed, it shall adopt a resolution ordering
23 that the district be formed and identifying the method by which
24 property owners can execute agreements to have their property
25 included in the district. The resolution shall state that the

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1 district will be governed by a district board consisting of
2 members of the governing body, or upon determination of the
3 governing body, five directors appointed by the governing body.
4 The resolution shall state that one or more subsequent
5 resolutions shall be adopted by the district board to identify
6 the property to be included in the district and the special
7 assessment to be imposed on that property.

8 C. The governing body shall cause a copy of the
9 resolution ordering formation of the district to be delivered to
10 the county assessor and county treasurer of the county in which
11 the district is located, the taxation and revenue department and
12 the local government division of the department of finance and
13 administration.

14 D. Subsequent to the formation of the district,
15 property may be included in the district by execution of an
16 agreement by the owner of the property and the district board,
17 agreeing to the inclusion of the property and the imposition of
18 a special assessment on the property, and the district board
19 shall adopt a supplemental resolution to this effect. The
20 district shall deliver a copy of the resolution to the county
21 assessor and county treasurer of the county in which the
22 district is located. A copy of the resolution and a description
23 of the property included in the district shall be recorded with
24 the county clerk of the county in which the district is located.

25 Section 7. SPECIAL ASSESSMENT--LIEN CREATED.--

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1 A. The district board may impose a special
2 assessment on property within the district to facilitate the
3 financing of renewable energy improvements to the property. The
4 special assessment shall be sufficient in the case of each
5 property to pay the costs of the financing of the renewable
6 energy improvements, including the costs of bond issuance, debt
7 service and administrative costs of the district and the
8 municipality or county in which the district is located.

9 B. The special assessment shall be levied and
10 collected at the same time and in the same manner as property
11 taxes are levied and collected, except to the extent that the
12 district board has provided for other imposition and collection
13 procedures. Money derived from the imposition of the special
14 assessment shall be kept separately from other funds of the
15 governing body.

16 C. A special assessment shall constitute a lien on
17 the property, which shall be effective during the period in
18 which the assessment is imposed and shall have priority over all
19 other liens except liens for ad valorem property taxes.

20 D. The obligation to pay the special assessment may
21 be prepaid and permanently satisfied, and the district board
22 shall specify the conditions under which this may be achieved.

23 Section 8. SPECIAL ASSESSMENT BONDS.--

24 A. A district may issue one or more series of bonds
25 to provide money for renewable energy improvements to property

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1 in the district, and the bonds may be payable from the special
2 assessments levied pursuant to one or more assessment
3 resolutions.

4 B. For any bonds issued pursuant to the Renewable
5 Energy Financing District Act, the district board shall
6 prescribe the denominations of the bonds, the principal amount
7 of each issue and the form of the bonds and shall establish the
8 maturities, which shall not exceed twenty years, interest
9 payment dates and interest rates, whether fixed or variable, not
10 exceeding the maximum rate stated in the resolution of the
11 district board. The bonds may be sold by competitive bid or
12 negotiated sale for public or private offering at, below or
13 above par. The proceeds of the bonds shall be deposited with
14 the treasurer, or with a trustee or agent designated by the
15 district board, to the credit of the district to be withdrawn
16 for the purposes provided by the Renewable Energy Financing
17 District Act. Pending that use, the proceeds may be invested as
18 determined by the district. The bonds shall be made payable as
19 to both principal and interest solely from revenues of the
20 district, and shall specify the revenues pledged for such
21 purposes, and shall contain such other terms, conditions,
22 covenants and agreements as the district board deems proper.

23 C. No holder of special assessment bonds issued
24 pursuant to the Renewable Energy Financing District Act may
25 compel any exercise of the taxing power of the district,

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1 municipality or county to pay the bonds or the interest on the
2 bonds. Special assessment bonds issued pursuant to that act are
3 not a debt or general obligation of the county or the
4 municipality in which the district is located, nor is the
5 payment of special assessment bonds enforceable out of any money
6 other than the revenue pledged to the payment of the bonds.

7 D. Pursuant to this section, the district may issue
8 and sell refunding bonds to refund any special assessment bonds
9 of the district authorized by the Renewable Energy Financing
10 District Act. Refunding bonds issued pursuant to this section
11 shall have a final maturity date no later than the final
12 maturity date of the bonds being refunded.

13 Section 9. APPOINTMENT OF DIRECTORS--QUALIFICATIONS--
14 TERMS--RESUMPTION OF GOVERNANCE BY GOVERNING BODY.--

15 A. The governing body, at its option, may authorize
16 the appointment of a separate district board. In the case of an
17 appointed district board, the directors shall serve an initial
18 term of six years. If a vacancy occurs on the district board
19 because of death, resignation or inability of a director to
20 discharge the duties of director, the governing body shall
21 appoint a director to fill the vacancy, who shall hold office
22 for the remainder of the unexpired term until the appointed
23 director's successor is appointed or elected.

24 B. At the end of the appointed director's initial
25 term, the governing body shall resume governance of the district

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1 as its board, or, at its option, shall hold an election of
2 directors by majority vote of the property owners in the
3 district, pursuant to Section 10 of the Renewable Energy
4 Financing District Act.

5 Section 10. NOTICE AND CONDUCT OF ELECTION FOR DISTRICT
6 BOARD.--

7 A. An election pursuant to the Renewable Energy
8 Financing District Act for the purpose of election of directors
9 of a district board shall be called by mailing notices to the
10 owners of property included in the district not less than twenty
11 days before the election. The property tax assessment rolls
12 shall be used to determine the owners of property included in
13 the district. Notice shall also be published one time in a
14 newspaper of general circulation in the municipality or county.
15 The notice shall state the purpose of the election, the date of
16 the election, the place of holding the election, the hours
17 during the day in which the polls will be open and provisions
18 for voting by mail.

19 B. Within thirty days after an election, the
20 district board shall meet and canvass the returns, determining
21 the number of votes properly cast. A majority of the votes cast
22 at the election shall be required for election of a member to
23 the district board.

24 Section 11. POWERS AND DUTIES OF A DISTRICT.--

25 A. The district board shall:

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1 (1) establish guidelines and standards for
2 renewable energy improvements to be made to property included in
3 the district;

4 (2) establish guidelines and procedures for a
5 property owner to enter into an agreement with the district
6 board to include property in the district;

7 (3) establish guidelines for the documentation
8 required from a property owner prior to property being included
9 in the district of the owner's contracts or agreements for
10 purchase and installation of renewable energy improvements;

11 (4) establish the amount of and impose special
12 assessments for the financing of the renewable energy
13 improvements, including the costs of bond issuance, debt service
14 and administrative costs of the district and the municipality or
15 county in which the district is located; and

16 (5) enter into contracts, agreements and trust
17 indentures to obtain credit enhancement or liquidity support for
18 its bonds and process the issuance, registration, transfer and
19 payment of its bonds and the disbursement and investment of
20 proceeds of the bonds.

21 B. The district board may enter into contracts to
22 carry out the purposes of the district on such terms and with
23 such persons as the board determines to be appropriate.

24 Section 12. CHANGE IN DISTRICT.--

25 A. At any time after adoption of a resolution

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1 creating a district, property may be added to the district at
2 the request of the owner of the property, upon adoption of a
3 resolution of the district board.

4 B. Property may be deleted from the district only
5 upon request of the property owner and adoption of a resolution
6 of intention to do so by the district board. Property within
7 the district that is subject to the lien of special assessments
8 or other charges imposed pursuant to the Renewable Energy
9 Financing District Act shall not be deleted from the district
10 while there are bonds outstanding that are payable by such
11 special assessments or charges.

12 Section 13. DISSOLUTION OF DISTRICT.--The district may be
13 dissolved by the district board by a resolution of the district
14 board upon a determination that the district has no outstanding
15 bond obligations. The district shall not be dissolved if any
16 bonds of the district remain outstanding unless an amount of
17 money sufficient, together with investment income thereon, to
18 make all payments due on the bonds either at maturity or prior
19 redemption has been deposited with a trustee or escrow agent and
20 pledged to the payment and redemption of the bonds. The
21 district may continue to operate after dissolution only as
22 needed to collect money and make payments on any outstanding
23 bonds.